

D.T.E. 99-56 June 28, 1999

Petition of Western Massachusetts Electric Company for Approval of a Contract Restructuring Agreement with Springfield Resource Recovery Limited Partnership and eco/Springfield, LLP under the terms of the Electric Restructuring Act, St. 1997, c. 164.

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FOR: WESTERN MASSACHUSETTS ELECTRIC COMPANY

Petitioner

I. INTRODUCTION

On May 21, 1999, Western Massachusetts Electric Company ("WMECo" or "Company"), pursuant to An Act Relative to Restructuring the Electric Utility Industry

(" Restructuring Act" or "Act"), St. 1997, c. 164 §§ 1(G), 1(H), petitioned the Department of Telecommunications and Energy ("Department") for approval of a contract restructuring agreement ("Contract Restructuring Agreement") that the Company executed with Springfield Resource Recovery Limited Partnership ("SRR") and eco/Springfield, LLP ("ECO"). Specifically, WMECo requests that the Department approve the following: 1) the termination of all obligations of the Company with respect to purchasing electricity from SRR under an existing power purchase agreement ("SRR PPA"); 2) the inclusion of the termination amount and associated transaction costs as actual and fully mitigated transition costs in the fixed component of the Company's transition charge; 3) approval of a new power purchase agreement with ECO ("ECO

PPA"), with whom SRR has negotiated a separate agreement for the sale of the SRR facility; 4) the inclusion of any above-market costs under the SRR PPA as actual and fully mitigated transition costs in the fixed component of the Company's transition charge; and 5) approval of the termination amount and associated transaction costs as costs that may be securitized by the Company pursuant to G.L. c. 164, § 1H.⁽¹⁾

Concurrently, and on June 2, 1999, the Company filed two Motions for Protective Treatment requesting that the termination payment and the economic analysis and pricing information contained in Exhibits 1, 2 and 5 to its petition be given protective treatment. On June 4, 1999, the Department issued a Notice of Filing and Request for Comments. State Senators Michael R. Knapik, Brian P. Lees, Linda J. Melconian, Andrea F. Nuciforo, Stanley C. Rosenberg, State Representatives Gale D. Candaras, Paul E. Caron, Walter A. DeFilippi, Daniel F. Keenan, John F. Merrigan, Thomas M. Petrolati, Mary S. Rogeness, Cheryl A. Rivera, Benjamin Swan, the towns of Agawam, Greenfield, Longmeadow and Southwick, the city of Springfield, as well as SRR filed comments in support of approval of the contract termination and restructured power purchase agreement. The Company provided responses to seven information requests. The Department, on its own motion, marks as exhibits the Company's petition, WMECo-1, and the Company's responses to the Department's information requests, DTE-WMECo 1-1 through DTE-WMECo 1-4, and DTE-WMECo 2-1 through DTE-WMECo 2-3, and moves them into the record of this proceeding.II. MOTION FOR PROTECTIVE TREATMENT

A. Introduction

On May 21, 1999, WMECo filed, pursuant to G.L. c. 25, § 5D, a Motion for Protective Treatment ("Motion 1") of information contained in exhibits 1 and 5 to Exh. WMECo-1. Subsequently, on June 2, 1999, WMECo filed a second Motion for Protective Treatment ("Motion 2") of information contained in exhibit 2 to Exh. WMECo-1. Specifically, WMECo seeks to protect from public disclosure the amount of the termination payment as well as an economic analysis of the proposal (Motion 1, at 1; Motion 2, at 1). The economic analysis consists of projected market rates, capacity factor and discount rates and compares the net present value of payments under the SRR PPA with the sum of the buyout payment and the net present value of the payments under the ECO PPA. (Motion 1, at 4, citing Exh. WMECo-1 at exh. 5).⁽²⁾ WMECo states that this material should be protected from public disclosure in order to protect the Company's future negotiating position (Motion 1, at 4; Motion 2, at 3-4). The Company argues that disclosure of the information could be detrimental to WMECo and its customers, in terms of the Company's ability to maximize mitigation as the Company negotiates buyouts of its other power purchase agreements (id.).

B. Standard of Review

Information filed with the Department may be protected from public disclosure pursuant to G.L. c. 25, § 5D, which states in part that:

the [D]epartment may protect from public disclosure, trade secrets, confidential, competitively sensitive or other proprietary information provided in the course of proceedings conducted pursuant to this chapter. There shall be a presumption that the information for which such protection is sought is public information and the burden shall be upon the proponent of such protection to prove the need for such protection. Where such a need has been found to exist, the Department shall protect only so much of the information as is necessary to meet such need.

G.L. c. 25, § 5D permits the Department, in certain narrowly defined circumstances, to grant exemptions from the general statutory mandate that all documents and data received by an agency of the Commonwealth are to be viewed as public records and, therefore, are to be made available for public review. See G.L. c. 66, § 10; G.L. c. 4, § 7, cl. twenty-sixth. Specifically, G.L. c. 25, § 5D, is an exemption recognized by G.L. c. 4, c.7, clause twenty-sixth (a) ("specifically or by necessary implication exempted from disclosure by statute").

G.L. c. 25, § 5D establishes a three-part standard for determining whether, and to what extent, information filed by a party in the course of a Department proceeding may be protected from public disclosure. First, the information for which protection is sought must constitute "trade secrets, [or] confidential, competitively sensitive or other proprietary information;" second, the party seeking protection must overcome the G.L. c. 66, § 10, statutory presumption that all such information is public information by "proving" the need for its non-disclosure; and third, even where a party proves such need, the Department may protect only so much of that information as is necessary to meet the established need and may limit the term or length of time such protection will be in effect. G.L. c. 25, § 5D.

Previous Department applications of the standard set forth in G.L. c. 25, § 5D reflect the narrow scope of this exemption. See Boston Edison Company: Private Fuel Storage Limited Liability Corporation, D.P.U. 96-113, at 4, Hearing Officer Ruling (March 18, 1997) (exemption denied with respect to the terms and conditions of the requesting party's Limited Liability Company Agreement, notwithstanding requesting party's assertion that such terms were competitively sensitive); see also, Standard of Review for Electric Contracts, D.P.U.

96-39, at 2, Letter Order (August 30, 1996) (Department will grant exemption for electricity contract prices, but "[p]roponents will face a more difficult task of overcoming the statutory presumption against the disclosure of other [contract] terms, such as the identity of the customer"); Colonial Gas Company, D.P.U. 96-18, at 4 (1996) (all requests for exemption of terms and conditions of gas supply contracts from public disclosure denied, except for those terms pertaining to pricing).

C. Analysis and Findings

The information regarding the termination payment and the economic analysis that the Company uses to evaluate buyout proposals is competitively sensitive and confidential. Disclosure of the information for which the Company seeks protection could undermine its efforts to maximize mitigation in negotiating buyouts of other power purchase agreements currently underway. Accordingly, the Department finds that the Company has provided sufficient reasons to protect the information in accordance with G.L. c. 25, § 5D, and hereby grants the Company's two Motions for Protective Treatment. Thus, exhibit 5 and the unredacted versions of exhibits 1 and 2 of Exh. WMECo-1 for Approval of the Termination Agreement will be excepted from public disclosure under G.L. c. 25, § 5D. Upon the completion of all of WMECo's power purchase agreement buyouts and re-negotiation under the Act, the § 5D protection accorded here will terminate without further action of the Department. L'Energia, D.T.E. 99-16 (1999).

III. SRR PPA BUYOUT AND ECO PPA

A. Introduction

WMECo and SRR entered into the SRR PPA dated June 3, 1986, and amended on November 1, 1988 (Exh. WMECo-1, at 3; Exh. DTE-WMECo 1-4). Pursuant to that agreement, WMECo purchases the net electrical output of the SRR facility (approximately 7.5 megawatts) (*id.*). The SRR PPA was to terminate on July 31, 2013 (*id.*). Pursuant to the SRR PPA, WMECo pays a minimum energy rate of \$0.105 for each kilowatthour delivered to the Company (*id.*). The cost of energy under the SRR PPA is now substantially above the market price of power (*id.*, at 4). In consideration for terminating the SRR PPA, WMECo has agreed to pay SRR a termination payment (Exh. WMECo-1, exh.1, at 2). WMECo proposes to include the termination payment and associated transaction costs as part of the expenses to be recovered from customers through the fixed component of the transition charge (Exh. WMECo-1, at 2).

WMECo has arranged with Toronto Dominion Bank ("TD") to finance the termination payment amount (Exh. WMECo-1, at 6). As a condition of paying over this sum to WMECo, TD has required that WMECo obtain an order stating that the termination payment amount has been "approved for securitization" (*id.*). In response to a request for clarification by the Department relative to the exact nature of the securitization approval WMECo seeks in this proceeding, the Company replied that, "WMECo seeks a finding that the termination amount and any associated transaction costs are fully mitigated transition costs, and as such are the type of costs that are eligible to included in a future application for securitization."

(Exh. DTE-WMECo 2-3). Therefore, WMECo requests approval of the termination payment amount and associated transaction costs (including interest and related fees) as costs that may be securitized pursuant to G.L. c. 164, § 1H (*id.*). Although WMECo has requested securitization approval of the termination payment amount and associated transaction costs, the Company states that it does not intend to issue rate reduction bonds for these amounts until such time as the Department rules on WMECo's request for

securitization of all or substantially all of its transition costs in a future proceeding (Exh. WMECo-1, at 6).

As part of the contract restructuring, WMECo proposes to enter into a new power purchase agreement with the new owner of the Springfield facility. The ECO PPA incorporates a fixed power purchase rate that is lower than the rate applicable to WMECo's power purchase rate under the SRR PPA (Exh. WMECo-1, at 2, exh. 3). In addition, the term of the ECO PPA, which expires on December 31, 2010, is approximately two and one-half years shorter than the SRR PPA (Exh. WMECo-1, at 5). WMECo proposes to include the remaining above-market costs of the ECO PPA as part of the expenses to be recovered from customers through the transition charge (id., at 2).

The Company's analysis indicates that the buyout itself, with the associated new power purchase contract, reduces the present worth of the payments associated with the SRR facility by 12 percent, or about \$2.6 million (Exh. WMECo-1, at 2, exh. 5). The Company states that this renegotiated contract is the best that can be reasonably expected and is the result of nearly two years of negotiations among many parties (Exhs. DTE-WMECo 1-3, DTE-WMECo 2-1).

B. Standard of Review

In determining whether to approve the proposed contract termination, the Department must address its reasonableness. The Department's analysis of a contract termination agreement is similar to that of a settlement agreement. See, e.g., Plymouth Rock Energy Associates, L.P., D.T.E. 92-122-B (1999). In assessing the reasonableness of a settlement agreement, the Department must review all available information to ensure that the agreement is consistent with the public interest. Commonwealth Electric Company, D.P.U. 91-200, at 5 (1993); Boston Edison Company, D.P.U. 92-183 (1992) (Department approval of a termination agreement of a purchase power contract with Down Easter Peat, L.P.). The Department also must review the agreement in this case in the context of the precedent regarding buyouts of purchase power contracts. D.P.U. 91-200, at 6.

The Department's regulations do not prohibit a company from negotiating a release from the obligations it has incurred, though such releases are subject to the Department's review. Altresco-Lynn, Inc. and Altresco-Pittsfield L.P., D.P.U. 91-142; and Cambridge

Electric Light Company and Commonwealth Electric Company, D.P.U. 91-153, at 15 (1991).⁽³⁾ The Department has also found that a buyout of a Boston Edison contract with Altresco-Lynn, was in the public interest. Boston Edison Company, D.P.U. 92-130-D (1996). In Electric Industry Restructuring, D.P.U. 95-30, at 32-35 (1995), the Department recognized the amount by which the cost of existing contractual commitments for purchased power exceeds the competitive market price for generation is a cognizable stranded cost component. That Order further stated that a reasonable opportunity to recover stranded costs would be in the public interest. The Act also allows for recovery of costs for existing contractual obligations for purchased power through the transition charge. G.L. c. 164, § 1G(b)(1)(iv). In Commonwealth Electric Company, D.T.E. 97-111,

at 90 (1998), the Department found that Commonwealth Electric Company's restructuring plan, which provided for the buyout of above-market purchase power obligations, was consistent or substantially complied with the Act. Id.

General Laws Chapter 164, § 1 et seq., requires electric companies to mitigate transition costs, and the renegotiation of above-market power purchase contracts is included as one mitigation method. G.L. c. 164, § 1G(d)(1)-(2). The Restructuring Act further provides that if a negotiated contract buyout is likely to achieve savings to ratepayers and is otherwise in the public interest, the Department is authorized to approve the recovery of the costs associated with the contract buyout. G.L. c. 164, § 1G(b)(1)(iv). In L'Energia, D.T.E. 99-16 (1999), the Department approved recovery of the costs of a contract buyout, because it was likely to achieve savings to ratepayers and was in the public interest. Id. at 7-8.

C. Analysis and Findings

As a result of the buyout and entry into the new contract, WMECo's ratepayers will save a total of \$2.6 million (Exh. WMECo-1, at 2, exh. 5). After reviewing the economic analysis, the Department finds WMECo's claim of savings to be credible and that the Company has made a reasonable case that the proposed transaction is the best it could obtain (Exhs. WMECo-1, at 2, exh. 5, DTE-WMECo 2-1 and DTE-WMECo 2-2). The Company has shown that the proposal produces substantial savings for its ratepayers.⁽⁴⁾ Because the buyout will achieve substantial savings for ratepayers, and because the savings would be used to mitigate the Company's transition costs, the Department finds that the buyout is in the public interest and consistent with the requirements of G.L. c. 164, § 1G(d)(2)(ii). Therefore, the Department approves the buyout.

The Company states that it has made many attempts to mitigate the above-market costs associated with the SRR PPA, and that the proposed contract restructuring agreement is the result of long and difficult negotiations (Exh. DTE-WMECo 2-1). The Department finds that WMECo has taken all reasonable steps to mitigate, to the maximum extent possible, the above-market costs associated with the SRR PPA. Therefore, WMECo may include the termination payment amount and any associated transaction costs of the SRR PPA as a transition cost.⁽⁵⁾ Consistent with the Act, the Company may include the above-market components of the ECO PPA in its transition charge. See Boston Edison Company, D.T.E. 98-119 (1999) (above-market buyout agreements of existing power purchase agreements may be included in the transition charge).

The Restructuring Act authorizes an electric company to securitize its transition costs by issuing rate reduction bonds ("RRBs") to investors that will be repaid through a portion of the transition charge. G.L. c. 164, § 1H. The Act requires the Department to find that specific conditions have been met in order for a company to be eligible to issue electric RRBs. See, e.g., Boston Edison Company, D.T.E. 98-118 (1999). For example, before approving an application for a financing order, the Department must be satisfied that a company has fully mitigated its related transition costs. Id. at 5. In this petition, WMECo seeks a finding that the termination payment amount and associated transaction costs are

costs that are the type of costs that are eligible to be included in a future application for securitization. (Exh. DTE-WMECo 2-3). Because the Company has deferred filing an application for a financing order until a future proceeding, it is premature for the Department to consider whether the termination payment and associated transaction costs are approved for securitization in this proceeding. However, as we have found above that the termination payment and associated transaction costs are fully mitigated transition costs, the Department finds that such costs are the type of costs that are eligible to be included by WMECo in any future application for securitization.

IV. ORDER

Accordingly, after due notice, opportunity for public comment, and consideration, it is hereby

ORDERED: That the Petition for approval of a Contract Restructuring Agreement between Western Massachusetts Electric Company, Springfield Resource Recovery Limited Partnership and eco/Springfield is approved; and it is

FURTHER ORDERED: That the Petition for approval of a Termination Agreement between Western Massachusetts Electric Company and Springfield Resource Recovery Limited Partnership is approved; and it is

FURTHER ORDERED: That Western Massachusetts Electric Company may include the termination payment amount and any associated transaction costs of the Springfield Resource Recovery Limited Partnership power purchase agreement in the transition charge; and it is

FURTHER ORDERED: That the Petition for approval of a power purchase agreement between Western Massachusetts Electric Company and eco/Springfield is approved; and it is

FURTHER ORDERED: That Western Massachusetts Electric Company may include any above-market components of the eco/Springfield power purchase agreement in the transition charge.

By Order of the Department,

Janet Gail Besser, Chair

James Connelly, Commissioner

W. Robert Keating, Commissioner

Paul B. Vasington, Commissioner

Eugene J. Sullivan, Jr., Commissioner

Appeal as to matters of law from any final decision, order or ruling of the Commission may be taken to the Supreme Judicial Court by an aggrieved party in interest by the filing of a written petition praying that the Order of the Commission be modified or set aside in whole or in part.

Such petition for appeal shall be filed with the Secretary of the Commission within twenty days after the date of service of the decision, order or ruling of the Commission, or within such further time as the Commission may allow upon request filed prior to the expiration of twenty days after the date of service of said decision, order or ruling. Within ten days after such petition has been filed, the appealing party shall enter the appeal in the Supreme Judicial Court sitting in Suffolk County by filing a copy thereof with the Clerk of said Court. (Sec. 5, Chapter 25, G.L. Ter. Ed., as most recently amended by Chapter 485 of the Acts of 1971).

1. In Boston Edison Company, D.T.E. 98-118, at 63 (1999), the Department stated that transition costs are properly subject to securitization as that term is used in G.L. c. 164, § 1H.
2. For a description of the SRR and ECO PPAs, see Section III, below.
3. In addressing a petition for an exception from 220 C.M.R. §§ 8.00 et seq., involving the negotiation and finalization of a power sales agreement, the Department stated that a company might be under an obligation to pursue a settlement if it was the best option for ratepayers. D.P.U. 91-153, at 15.
4. The Company will achieve ratepayer savings through a reduction in the contract price of power from \$0.105 per kilowatthour to \$0.05 per kilowatthour.
5. The Company seeks recovery of these amounts in the fixed component of the transition charge. This is inconsistent with the restructuring plan approved by the Department pursuant to G. L. c. 164, § 1(A)(a) in its Initial Order in Western Massachusetts Electric Company, D.T.E. 97-120 (1998); see also, Exh. WMECo 1 at Sch. 13, D.T.E. 97-120. In D.T.E. 97-120, at 6 (1998), the Department approved in an Initial Order on the Company's restructuring plan, recovery of above market payments to power suppliers and economic buyout payments of PPAs in the variable component of transition cost recovery. Therefore, recovery of the termination payment amount and associated transaction costs of the SRR PPA would be included in the variable component of the transition charge.